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In re Application of PHUNG et al
U.S. Application No.: 09/743,690
Int. Application No.: PCT/NZ99/00110
Int. Filing Date: 15 July 1999
Priority Date: 15 July 1998
Attorney Docket No.: 020829-000100US
For: CHIMERIC POLYPEPTIDES ALLOWING
EXPRESSION OF PLANT-NOXIOUS
PROTEINS

DECISION

This is in response to the papers filed 11 May 2001, which is being treated as a request for status under 37 CFR 1.42.

BACKGROUND

On 15 July 1999, applicants filed international application PCT/NZ99/00110, which claimed priority of an earlier New Zealand application filed 15 July 1998. A copy of the international application was communicated to the USPTO from the International Bureau on 27 January 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 10 November 1999, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 15 January 2001.

On 12 January 2001, applicants filed national stage papers in the United States. The submission was accompanied by, *inter alia*, authorization to charge the basic national fee required by 35 U.S.C. 371(c)(1).

On 07 February 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), indicating that an oath or declaration in compliance with 37 CFR 1.497 must be filed along with a surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty (30) months from the priority date.

On 11 May 2001, applicants filed a declaration signed by seven of the eight joint inventors and also signed by the executor of joint inventor Margaret Mary Phung, who according to the declaration is deceased.

DISCUSSION

37 CFR 1.42 provides, "In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent."

Effective 07 November 2000, 37 CFR 1.497(b)(2) specifies that, where a person making the declaration is the legal representative of a deceased inventor, the declaration shall state the following: (1) the relationship of the person to the inventor, (2) the facts the inventor would have been required to state, upon information and belief, (3) that the person is the legal representative of the deceased inventor, and (4) the citizenship, residence, and mailing address of the legal representative.

The declaration filed 11 May 2001 is in compliance with 37 CFR 1.42.

CONCLUSION

The papers filed 11 May 2001 are ACCEPTED under 37 CFR 1.42.

The application has an international filing date of 15 July 1999 and a date under 35 U.S.C. 371 of 11 May 2001.

This application is being forwarded to the DO/EO/US for processing in accordance with this decision.



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